

## ARTICLE 81-10

### BANKS, TRUST COMPANIES, AND SAVINGS AND LOAN ASSOCIATIONS

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#### CHAPTER 81-10-01 GENERAL

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**81-10-01-01. General.** This chapter sets forth the rules which a bank must follow in filing its tax return if the bank has consolidated or merged pursuant to North Dakota Century Code chapter 6-03.

**History:** Effective January 1, 1989.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-35-02.1, 57-35.2-02.2

**81-10-01-02. Definitions.** As used in this chapter and for the administration of North Dakota Century Code sections 57-35-02.1 and 57-35.2-02.2, unless the context otherwise requires:

1. "Allocate" means to assign the income or expense item to either the principal office or a particular branch office.
2. "Apportion" means to divide the income or expense item between the principal office and each branch office by using the applicable deposit factor.
3. "Bank" means the principal office and all branch offices.
4. "Branch office" means the banking houses or offices or the paying or receiving stations of the bank other than the principal office.
5. "Commissioner" means the tax commissioner of the state of North Dakota.
6. "Deposits" mean:
  - a. The unpaid balance of money or its equivalent received or held by the principal office or one of its branch offices in the usual course of business and for which it has given or is obligated to

give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the principal office or a branch office, or a letter of credit or a traveler's check on which the principal office or a branch office is primarily liable. Provided, that, without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to the principal office or a branch office for collection.

- b. Trust funds received or held by the principal office or a branch office, whether held in the trust department or held or deposited in any other department of the principal office or a branch office.
- c. Money received or held by the principal office or a branch office, or the credit given for money or its equivalent received or held by the principal office or a branch office, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the principal office or a branch office or others (including funds held as dealer's reserves), or for securities loaned by the principal office or a branch office, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held to meet its acceptance of letters of credit, and withheld taxes. Provided, that there shall not be included funds which are received by the principal office or a branch office for immediate application to the reduction of an indebtedness to the receiving entity, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness.
- d. Outstanding draft (including advice or authorization to charge the principal office or a branch office's balance in another bank), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including, without being limited to, those issued in payment for services, dividends, or purchases.
- e. Such other obligations of the principal office or a branch office as the board of directors, after consultation with the comptroller of the currency and the board of governors of the federal reserve system, shall find and prescribe by regulation to be deposit liabilities by

general usage, except that the following shall not be a deposit for any of the purposes of this chapter or be included as part of the total deposits or of an insured deposit:

- (1) Any obligation of a principal office or a branch office which is payable only at a location outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.
- (2) Any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the board of governors of the federal reserve system in Regulation D or any successor regulation issued by the board of governors of the federal reserve system.

7. "Principal office" means the office where the bank's charter is located.

**History:** Effective January 1, 1989.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-35-02.1, 57-35.2-02.2

**81-10-01-03. Preparation of pro forma return.** The principal office and each branch office shall prepare a pro forma federal income tax return based on the income and expense it would have earned or incurred if the merger or consolidation had not occurred. Provided, however, that the principal office and all branch offices may submit the required information in another format if the principal office receives written permission to do so from the commissioner.

**History:** Effective January 1, 1989.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-35-02.1, 57-35.2-02.2

**81-10-01-04. Computation of pro forma taxable income.** The following method must be used by the principal office and each branch office to compute its pro forma federal taxable income:

1. Any item of income or expense that is entirely earned or incurred by the principal office or a particular branch office must be allocated to the office which earned the income or incurred the expense. Examples of income or expense items which should be allocated include, but are not limited to, the following:
  - a. Income items.
    - (1) Rents.
    - (2) Royalties.

- (3) Capital gains.
- (4) Interest from loans.

b. Expense items.

- (1) Repairs.
- (2) Bad debts.
- (3) Rents.
- (4) Property taxes.
- (5) Contributions.
- (6) Depreciation.
- (7) Salaries and wages.

2. Any item of income or expense that is earned or incurred for the benefit of the principal office and one or more branch offices must be apportioned to the principal office and the appropriate branch offices by using the applicable deposit factor. Income and expense items which should be apportioned include, but are not limited to, the following:

a. Income items.

- (1) Dividends.
- (2) Interest.
- (3) Capital gains.

b. Expense items.

- (1) Salaries of officers and directors.
- (2) Salaries and wages of employees.

(3) Taxes, except for property taxes.

- (4) Payments to employee pension, profit sharing, or benefit plans.
- (5) Advertising.
- (6) Insurance.

(7) Interest.

**History:** Effective January 1, 1989.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-35-02.1, 57-35.2-02.2

**81-10-01-05. Deposit factor.** The deposit factor must be determined in the following manner:

1. The numerator must be equivalent to either the principal office or a particular branch office's deposits during the tax period.
2. The denominator must be equivalent to the principal office and all branch offices' deposits during the tax period.

**History:** Effective January 1, 1989.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-35-02.1, 57-35.2-02.2